



Qwest
607 14th Street NW, Suite 950
Washington, DC 20005
Phone 202.429.3120
Fax 202.293.0561

Melissa E. Newman
Vice President-Federal Regulatory

EX PARTE

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February 3, 2006

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Room TW-A325
Washington, DC 20554

RE: Developing a Unified Intercarrier Compensation Regime - CC Docket 01-92

Dear Ms. Dortch:

On February 2, 2006, Melissa Newman, Tim Boucher, Lynn Starr and John Kure of Qwest met with Ian Dillner, Legal Advisor to Commissioner Tate, to discuss phantom traffic.

The attached document was used as a basis for discussion in the meeting.

Sincerely,
/s/ Melissa E. Newman

Attachment

Copy via email to:
Ian Dillner

Phantom Traffic

Developing a Unified Inter-carrier Compensation Regime
CC Docket 01-92

Qwest *Ex Parte*

February 2, 2006



A Partial Cure for Phantom Traffic

Phantom traffic¹ is a major and immediate threat to the current intercarrier compensation regulatory structure and steps need to be taken immediately to deal with it.

This *ex parte* focuses on one narrow but important aspect of phantom traffic which has been the focus of recent *ex partes* by other parties – establishing the obligations of carriers with respect to the delivery of basic signaling information and other fundamental carrier obligations necessary to accomplishing billing. Qwest does not believe that this type of relief will solve the broader phantom traffic problem, but imposition of these rules will help reduce the occurrence of phantom traffic and therefore constitutes an important first step.

¹ Phantom traffic describes a number of situations in which the traffic is delivered to a terminating carrier in a manner that makes appropriate billing impossible, including, by way of example, terminating access traffic that has been erroneously designated as interstate when in fact it is jurisdictionally intrastate or traffic that has been erroneously designated as local traffic. Qwest agrees with other parties who have stated that the Commission must focus urgently on all aspects of the problem. The Commission could address this problem through comprehensive reform in the *Inter-carrier Compensation* and *IP-Enabled Services* dockets. Qwest urges the Commission to act as soon as possible in these broader proceedings as piecemeal relief is often less effective. In the meantime, the Commission should act where it can – i.e. through the relief set forth herein and in dockets such as the SBC/VarTec petitions dealing with the application of access charges to IP-transported calls, WC Docket No. 05-276.

US Telecom's Proposal Provides the Basis for a Solution

Qwest agrees with US Telecom's statement that the fundamental responsibilities of carriers should include "the delivery of signaling information to tandem providers and terminating carriers which facilitates the creation of accurate billing records, identification of parties responsible for payment, and the appropriate rating of calls." November 2005 US Telecom *Ex Parte*, p. 2.

Qwest Supports the Five Key Components of US Telecom's Proposal, with some Modification/Clarification

1. Agreements

Qwest agrees with US Telecom that the Commission should clarify that all carriers exchanging local traffic have the ability to enter into agreements. Some agreements may be subject to the Section 252 negotiation/arbitration process, opt-in features, etc. (e.g., those arising under Section 251(b) and (c)) while others may be governed by Sections 251(a) and 201(a). Regardless, the Act facilitates the accomplishment of agreements between all carriers that exchange traffic either directly or indirectly and any carrier (e.g., ILECs, CLECs and CMRS carriers) has the right to demand such negotiations with any other carrier as a condition of exchanging traffic.

Agreements are the best method of addressing complaints by terminating carriers that they are unable to identify responsible carriers in the transiting context. Claims of an “inability” to identify a responsible carrier typically arise where an identified carrier disputes responsibility or where terminating carriers must expend resources to look to available data to identify a responsible carrier (e.g., in the LERG). The agreement should specify how and when information is exchanged.

One underlying policy question is whether terminating carriers should be able to pass this burden to transit service providers or should assume it themselves. The Commission should clarify that terminating carriers must obtain any billing information they need – beyond the required signaling stream information described above – directly from originating providers, by utilizing their own resources or by negotiation with intermediate carriers.

2. Initial Signaling Stream Information

Qwest agrees with US Telecom's proposal that the Commission should require originating carriers to populate, *where possible with their network technology deployed at the time the call originated*, the following signaling information:

- for calls where SS7 (out-of-band) signaling is used, the telephone number of the end user originating the call must be transmitted in the Calling Party Number (CPN) parameter *or* in the Charge Number (CN) parameter when it is not the same as the number to be displayed in Caller ID or if CPN is not required pursuant to 47 C.F.R. 64.1601.²
- for calls where MF (in-band) signaling is used, the telephone number of the end user originating the call must be transmitted by including Automatic Number Identification (ANI) information in the signaling stream.

An important note on technical limitations of originating carriers:

Qwest agrees with US Telecom that any signaling information requirement imposed on carriers must not impose obligations that would require providers to employ new technology or system modifications in order to comply.

However, due to the need for this exception to address technical limitations, there is a potential that the rule proposed by US Telecom will be abused. In order to help address this, the Commission must clarify that a carrier should be required to provide the signaling stream information discussed above where possible with its currently deployed network technology and as governed by industry standards.³

The Commission should also clarify that, if a carrier currently has a signaling capability, it should be required to use it consistent with these rules – i.e., carriers with SS7 capability must use it and not revert to use of in-band (MF).

² Qwest would also support the proposal of Midsize Carrier Coalition that, where SS7 signaling is used, originating carriers also must populate the Jurisdictional Indicator Parameter (JIP) per industry signaling standards – i.e. in addition to populating either CPN or CN. While JIP is not necessarily determinative of jurisdiction in all circumstances, the provision of JIP simply gives carriers another billing tool. If JIP is included as a mandatory parameter, the Commission should clarify that this requirement does not make JIP determinative of the jurisdiction of a call in all cases. Indeed, CPN and CN also may not be determinative of jurisdiction in all cases.

³ For example, where traffic is directed from a PBX to an originating local exchange carrier, in some cases (depending on the PBX and the service requested by the end user), those carriers currently cannot populate the signaling parameters discussed above using the technology they currently have deployed and would not be required to do so under the proposed rules. This is consistent with the existing rules set forth at 47 CFR § 64.1601(d). Similarly, where IXC traffic is originated via a private line connection to an IXC, those IXCs currently could not populate the parameters and would not be required to under the proposed rules.

3. The Role of Intermediate Carriers

Qwest agrees with US Telecom's proposal that the Commission should require intermediate carriers, defined as any carriers that are not either the originating carrier or the terminating carrier for a given call, to transmit without alteration the signaling information they receive from the originating carrier or another intermediate carrier.

The Commission should also clarify that intermediate carriers have no independent obligation to populate the signaling stream for a call on behalf of another carrier and have no obligation to verify (or certify) the completeness or accuracy of signaling information they receive. In other words, these proposed rules do not create any exposure for intermediate carriers in the event a terminating carrier receives deficient signaling information *provided* the intermediate carrier has passed on without alteration the signaling information it received.

Four important clarifications are needed in any new rules so that intermediate carriers are not “caught in the middle” between originating and terminating carriers:

- a. The Commission should clarify once again that transit service providers are not liable for terminating compensation payments under Section 251(b)(5) of the Act. They provide neither local exchange nor exchange access services. The law is clear that transiting service providers are not thus liable, but significant litigation continues in which terminating carriers seek to bill them for termination, often using tariff filings as a device to attempt to get around the Commission's rules on this issue.
- b. The Commission should clarify that the above proposed rules do not require intermediate carriers to block traffic based on deficiencies in signaling information or billing disputes between originating and terminating carriers. For example, these rules do not mandate switch architecture features that will automatically block calls that do not contain the required signaling stream.

- c. The Commission should clarify that intermediate carriers have no mandatory obligation to provide EMI records or other call records to terminating carriers in the absence of an agreement. On the other hand, it would be an unreasonable practice to refuse a request to negotiate an agreement for such records. Contrary to the contentions of Iowa Network Services et al., in their ex parte comments, the decision of the Minnesota PUC in Docket No. P-421/C-04-200 does not require Qwest to provide such billing records.
- d. The Commission should clarify that, in the event a transit service provider does generate EMI records or similar call record information, it must be able to obtain remuneration for that service.

4. LNP Queries

Qwest agrees with US Telecom that the Commission should clarify that, for call routing purposes, the originating carrier on a non-IXC call and the originating IXC for IXC-carried calls is responsible for performing a local number portability (LNP) query on the terminating number before forwarding a call. In order to fulfill this obligation, these carriers must perform the required LNP query before passing the call on to the local network of a transiting carrier or terminating carrier.

The Commission should also clarify that there are cases where the originating carrier/originating IXC is not actually the N-1 carrier and would be subject to this query obligation.

5. The LERG

Qwest agrees with US Telecom that the Commission should clarify that carriers must route traffic on the PSTN according to the Local Exchange Routing Guide (LERG) where permitted with its network technology deployed at the time the call was originated.

In this part of its proposal, US Telecom includes the language “[e]xcept by written agreement or tariff...” However, this “exception” language is not adequate to reflect the fact that the LERG need only be followed if a carrier indirectly connects to the terminating carrier’s end office. The Commission should clarify this fact.